IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.491 OF 2007

Shaikh Mukhtar Ibrahim
(Since deceased through L.Rs.)
1a. Smt. Naseem widow of Mukhtar Shaikh
& Ors. ..Applicants.
Vs.
Smt. Shakuntala Baburao Belekar ..Respondent.

Mr.Anilkumar Patil, adv. for the Applicants.
Mr.T.N.Sonawane, adv. for the Respondent.

CORAM : J.H.BHATIA, J.
DATE : NOVEMBER 21, 2007.

P.C.:

1. Heard the learned counsel for the Parties.

2. The respondent is the original plaintiff and the landlady. She filed suit for eviction against the tenant, Mukhtar Shaikh, who was original defendant on several grounds including bonafide requirement of her own family. According to her, the house consists of total five rooms. The defendant was in occupation of one of the rooms as a tenant. She was in occupation of only two rooms and two rooms were mortgaged and were not available for her own occupation. Her family consists of herself and her three sons. Out of the three sons, one son was married and two were of marriageable age and, therefore, she needed the house for occupation of her own family. The trial Court

decreed the suit on the ground of bonafide requirement as well as on some other grounds. The judgment was challenged in Civil Appeal No.18 of 1999 by the legal heirs of the deceased defendant. The appeal came to be dismissed. The appellate Court also found that the plaintiff had proved that she requires the suit house for her personal use and occupation. Against that the legal heirs of the original defendant have preferred the present revision application.

3. After hearing parties and perusal of the judgments of the Courts below, it is clear that according to the plaintiff, there were in all five rooms in the said chawl including room in possession of the defendant. In the Written Statement, this fact was admitted by the defendant. Even though the D.W.1 Smt. Naseem Shaikh tried to contend that there were in all nine rooms, her deposition was rejected on the ground that it was contrary to the pleadings of the defendant. The Courts below found that out of the total five rooms, two rooms were previously in occupation of Smt.Wagh. After she vacated two rooms, the plaintiff had mortgaged the same with some third person and according to her she was unable to raise the funds to redeem that mortgage and, therefore, those two rooms were also not available for her use. Thus, she is left with only two rooms. There is no dispute that the

plaintiff is widow having three sons. One of them was married when the matter came up for trial and two sons were of marriageable age. The dispute is pending before the different Courts for the last about 15 years. Those two sons may also have been married by this time. In such circumstances, I find no fault with the findings of the Courts below that the plaintiff bonafide requires the suit premises for personal use of herself and her family members. Even if the remaining two rooms, which are mortgaged, are available to them still the five rooms house can not be luxury for the family consisting of the landlady and her three married sons and their children.

4. In view of the above circumstances, I find no fault with the decree passed by the trial Court on the ground of bonafide requirement. Revision stands dismissed.

5. At this stage, the learned counsel for the applicant/defendant makes a request that some reasonable time may be granted to vacate the premises. He makes a statement that the applicant shall file a written undertaking before this Court within four weeks from this day that they would vacate the suit premises by the end of March, 2008. The learned counsel for the plaintiff/respondent has no objection. Therefore,

subject to the applicant/defendant filing written undertaking before this Court within four weeks from this day that they shall vacate the suit premises by the end of March, 2008 with further condition that they will not create any third party interest, decree shall remain stayed till the end of March, 2008. If they fail to file such undertaking within a period of four weeks, the plaintiff shall be at liberty to execute the decree at any time. The applicants shall also pay rent/compensation to the plaintiff for the period during which they were allowed to stay.

[J.H.BHATIA, J.]